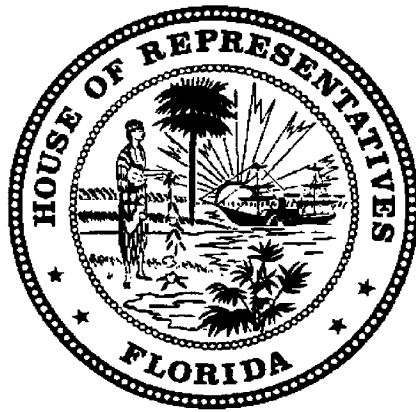


Florida House of Representatives



INTERIM REPORT ON JUDICIAL DISCRETION TO SELECT JUVENILE COMMITMENT PROGRAMS

JUVENILE JUSTICE COMMITTEE

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I. INTRODUCTION

Currently, s. 985.231(1)(a)3., F.S., authorizes the court, when committing an adjudicated delinquent youth to the Department of Juvenile Justice (DJJ or department), to order a commitment restrictiveness level for the youth.¹ The statute, however, does not authorize the court to select the particular commitment program for the youth. Instead, the DJJ is responsible for choosing a commitment program within the court-ordered restrictiveness level.

During the 2003 and 2005 Regular Sessions, the Legislature considered, but did not pass, legislation that would have authorized judges to select a particular program within a commitment restrictiveness level.² The legislation provided the court with the *discretion* to select a program, but it did not require this responsibility of the judiciary. Representatives of the DJJ raised concerns about the legislation, indicating that it might generate additional costs if judicial program selection resulted in youth remaining in post-disposition secure detention for a longer period of time.³ The judiciary did not testify regarding this legislation.

In order to provide legislators with judicial input, the Florida Senate Criminal Justice Committee conducted a survey of Florida juvenile delinquency judges in 2003, which included the following two questions: (1) Did the judge believe that the current statutory commitment placement process was effective? and (2) How well did the current statutory commitment placement process function in the judge's circuit?⁴

In the committee's report entitled, "Judicial Discretion Placing Juveniles in Specific Commitment Programs," it was indicated that 38 out of the 82 surveys distributed (46 percent) were returned.⁵ Out of the 38 respondents to Question 1:

- Thirty-two judges rated the current process effective (84 percent of respondents); however, when answering Question 2., 11 of the 32 judges indicated that they had some or many problems with the process.⁶
- Five judges found the current process ineffective (13 percent of respondents).
- One judge found that the "effectiveness depends" (three percent of respondents).⁷

The Senate survey did not specifically ask judges whether it would be desirable to amend statute to provide judicial discretion to select commitment programs, as had been proposed in the 2003 and 2005 legislation.

¹ Section 985.03(46), F.S., provides that, "[r]estrictiveness level means the level of programming and security provided by programs that service the supervision, custody, care, and treatment needs of committed children." According to s. 985.231(1)(a)3., F.S., "[s]uch commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, urine monitoring, and treatment of the child...."

² See HB 1741 and SB 1900 (2003) and HB 1917 (2005).

³ See House Bill Analysis for HB 1917, April 12, 2005, p. 8.

⁴ See *Senate Questionnaire Regarding s. 985.231(1)(a)3., F.S.* (2003); and *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126, Senate Criminal Justice Committee, January 2004, pp. 1, 3-5.

⁵ *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126 at p. 3.

⁶ Problems cited by judges who found the current process to be effective included that: (1) the DJJ sometimes places youth in inappropriate placements and processes them based upon the estimated length of stay in a residential program; (2) placement is driven by bed space, rather than programming that meets the youth's needs; and (3) high level programs are underfunded and youth are in secure detention too long while awaiting placement. *Id.* at 4-5.

⁷ *Id.* at 3.

During the 2005 interim, staff was directed to further review the issue of providing judicial discretion to select commitment programs. Accordingly, this report contains:

- An overview of relevant statutes and DJJ policies relating to disposition, commitment, and placement.
- The results of a survey of Florida juvenile delinquency judges, which requested opinions on the current satisfaction level with DJJ placement decisions, judicial knowledge of commitment programs, and the desirability of providing judicial discretion.
- The DJJ's position on providing judicial discretion.
- Recommendations that the Legislature may wish to consider if legislation providing judicial discretion is filed in the future.

II. METHODOLOGY

Staff reviewed current statutes and DJJ policies regarding the disposition, commitment, and placement of adjudicated delinquent youth. Further, staff disseminated a survey through the Office of State Courts Administrator to each chief judge in Florida's 20 judicial circuits with a request that he or she distribute the survey to juvenile delinquency judges within the circuit. Additional data were gathered through interviews with state juvenile delinquency judges and representatives of the DJJ, and through site visits to juvenile court.

III. FINDINGS

Statutes and DJJ Policies Addressing Disposition, Commitment, and Placement of Delinquent Youth

Disposition and Commitment of Delinquent Youth: When a youth has been found to have committed a delinquent act, the first disposition determination to be made by the court is "the suitability or nonsuitability for adjudication and commitment of the child to the department."⁸ The options available to the court for disposition include:

- A withhold of adjudication and imposition of a probation program with community-based sanctions;⁹ or
- Adjudication and:
 - Imposition of a probation program;¹⁰ or
 - Commitment to the DJJ for placement in:
 - The non-residential minimum-risk restrictiveness level;
 - The residential low-, moderate-, high-, or maximum-risk restrictiveness level;¹¹

⁸ Section 985.23(2), F.S.

⁹ Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution, a curfew, revocation or suspension of the youth's driver's license, community service, and appropriate educational programs. Section 985.23(4), F.S.

¹⁰ A probation program for an adjudicated youth must include penalties such as restitution, community service, a curfew, revocation or suspension of the driver's license of the youth, or other nonresidential punishment appropriate to the offense and a rehabilitative program such as participation in substance abuse treatment or in school or another educational program. Section 985.231(1)(a)1., F.S.

¹¹ See Section 985.03(46), F.S. (defining each restrictiveness level).

- or,
- A serious or habitual juvenile offender or juvenile sexual offender program.¹²

Before ordering commitment for a youth, the court must consider a predisposition report (PDR) that is based upon a multidisciplinary assessment of the youth by the DJJ and that includes:

- A description of the youth's criminal history, educational background, and needs, and if residential commitment is considered, a comprehensive evaluation of the youth's physical and mental health and of substance abuse, academic, educational, or vocational problems.
- The DJJ's recommendation for a treatment plan and restrictiveness level as determined during a commitment staffing¹³ conducted by the DJJ for the youth.¹⁴

The PDR must be provided to the court at least 48 hours before the youth's disposition hearing.¹⁵ The court may choose to follow the DJJ's recommendation in the PDR, or it may reject the recommendation if it states reasons that establish by a preponderance of the evidence why the court is rejecting the DJJ's recommendation.^{16 17} Any party may appeal the court's decision to reject the DJJ's recommendation.¹⁸

If the court orders commitment for the youth, it must specify the commitment restrictiveness level, but it may not select a particular program within the level.¹⁹ Instead, the DJJ is responsible for placing the youth in a program within the court-ordered restrictiveness level.

Placement of Committed Youth: Once a court has committed a youth to a restrictiveness level, a DJJ commitment manager utilizes the Juvenile Justice Information System (JJIS) to determine the appropriate program placement. The JJIS manages the availability of bed slots within the 168 programs currently offered in the five commitment restrictiveness levels. [See Exhibit 1, for identification of the number of commitment programs offered within each restrictiveness level.]

¹² Section 985.231, F.S.

¹³ According to DJJ representatives, invitees to the commitment staffing include the JPO, a DJJ commitment manager, the youth, the youth's parent(s) or guardian(s), the state attorney, the public defender, school officials, mental health staff, and other parties with information regarding the youth.

¹⁴ Sections 985.229(1) and 985.23(2) and (3)(b), F.S.; *See also* Section 985.23(2), F.S. (specifying additional information to be contained in the PDR).

¹⁵ Section 985.229(1), F.S.

¹⁶ *See* Section 985.23(3)(c), F.S.

¹⁷ Data provided by the DJJ indicates that judges agreed with DJJ's disposition recommendation approximately 76 percent (n=8500) of the time in Fiscal Year 2004-2005.

¹⁸ Section 985.23(3)(c), F.S.

¹⁹ *See Department of Juvenile Justice v. J.R.*, 716 So.2d 872 (Fla 1st DCA 1998) and *Department of Juvenile Justice v. E.R., J.R., M.C., and C.A.*, 724 So.2d 129 (Fla 3rd DCA 1998) (holding that the court has no statutory authority to require placement of a committed youth in a particular facility).

Exhibit 1.

Restrictiveness Level	Number of Programs	Number of Youth Currently Being Served	Current Number of Bed Slots
Minimum-risk	19	78	176
Low-risk residential	18	393	473
Moderate-risk residential	93	3823	4049
High-risk residential	34	1792	1902
Maximum-risk residential	4	125	133
Total	168	6211	6733

Source: DJJ, August 2005.

For each committed youth, a DJJ commitment manager enters the following information into the JJIS:

- **The restrictiveness level ordered by the court:** minimum-, low-, moderate-, high-, or maximum-risk.
- **Whether the youth needs any of the following services:** pregnancy services; restitution services; a staff, fence, or hardware secure facility; sex offender treatment; behavior overlay services; residential substance abuse overlay services; intensive mental health services; special needs mental health services; mental health overlay services; developmentally disabled services; social and life skills; vocational training; educational services; residential substance abuse treatment; or specialized mental health services.
- **Whether any of the following disqualifying factors apply to the youth:** documented arson history; extremely aggressive behavior; DSM IV diagnosis; psychotropic medications; IQ below 70; serious habitual offender; intensive residential treatment; asthma; diabetes; heart condition; seizures; sickle cell anemia; cancer; sexually transmitted disease; tuberculosis; or pregnancy.

Based on this information, the JJIS produces a list of programs that will meet the youth's needs and for which the youth has no disqualifying factors. The JJIS also indicates the expected wait list for the listed programs. [See Exhibit 2. for identification of the average number of days youth spent in Fiscal Years 2003 through 2005 awaiting residential commitment program placement.]

Exhibit 2.

Risk Level²⁰	Low-risk	Moderate-risk	High-risk	Maximum-risk
Average # of days on waiting list in Fiscal Year '03—'04	24.3 days	27.1 days	34 days	17.3 days
Average # of days on waiting list in Fiscal Year '04—'05	28.6 days	25.3 days	28.5 days	18.1 days

Source: DJJ.

If no programs are currently available, the JJIS indicates which program will have the next vacancy based on anticipated release dates. The commitment manager selects a program from the JJIS list after considering which of the programs best meets the youth's needs and which is closest to the youth's home.

The JJIS does not factor Program Accountability Measures (PAM)²¹ and Quality Assurance²² ratings into the placement process; however, DJJ representatives have indicated that the commitment manager may be aware of the ratings and may, in his or her discretion, factor these into the final placement choice for a youth.²³

Judicial Survey Results

Staff distributed a survey through the Office of State Courts Administrator to each chief judge in Florida's 20 judicial circuits with a request that he or she distribute the survey to juvenile delinquency judges within the circuit. Out of a possible 81 juvenile delinquency judges in Florida, 41 judges responded to the survey (51 percent). The responses were received from 16 of Florida's 20 judicial circuits.²⁴

²⁰ Minimum-risk nonresidential was not a "commitment" option during Fiscal Years 2003-2005. See Footnote 25, *infra*.

²¹ PAM scores consist of a program recidivism effectiveness measure and a cost effectiveness measure. Recidivism effectiveness is calculated as the standardized difference between the program's expected recidivism and observed recidivism. Cost effectiveness is calculated as the standardized difference between each program's average cost per youth completing the program and the statewide average cost per completion of \$34,083. See *The 2005 PAM Report*, Department of Juvenile Justice, December 2004, p. 5.

²² Quality Assurance ratings are based upon an evaluation of the following three elements in each program: (1) level of performance and quality of services; (2) immediate and long-term outcomes; and (3) cost. See *An Introduction to Florida's Juvenile Justice Quality Assurance System*, Department of Juvenile Justice, May 2004, p. 4.

²³ Information regarding the JJIS and the DJJ's placement procedures was provided during an interview of DJJ Residential Services staff on August 25, 2005.

²⁴ Survey responses were received from judges in the First, Second, Third, Fifth, Seventh, Eighth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial Circuits.

Satisfaction level with DJJ placement decisions: The survey asked juvenile delinquency judges to rate their level of satisfaction with the DJJ's placement decisions for residentially committed youth.²⁵ Of the 41 judges responding:

- 29 percent were very satisfied.
- 44 percent were somewhat satisfied.
- 12 percent were somewhat dissatisfied.
- Three percent were very dissatisfied.
- 12 percent stated unknown or did not answer the question.

[See Exhibit 3. for a breakdown of responses by residential restrictiveness level.]

Exhibit 3.

Residential Restrictiveness Level	Very Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Very Dissatisfied	Unknown/ No answer
Low-risk	14	19	3	2	3
Moderate-risk	10	19	8	1	3
High-risk	12	19	5	1	4
Maximum-risk	12	15	4	1	9

The survey also provided judges, who expressed dissatisfaction with placement decisions, with an opportunity to explain their answers. The explanations included the following:

- Five judges were dissatisfied due to a lack of program options and long waiting lists. One of these judges cited insufficient funding as the cause of these problems.
- Two judges were dissatisfied because they believe the DJJ should consider commitment at an earlier point in the juvenile's delinquency history.
- One judge was dissatisfied because youth are not always placed in a program that addresses the youth's needs.
- One judge was dissatisfied because the DJJ does not do comprehensive psychological evaluations on youth unless commitment is targeted.²⁶
- One judge stated that the DJJ's placement decisions were generally appropriate and that increased use of assessments had improved the process; however, the judge noted that the assessment is often not available to the judge at the time of disposition, even though it would be a useful tool for a judge in making disposition decisions.

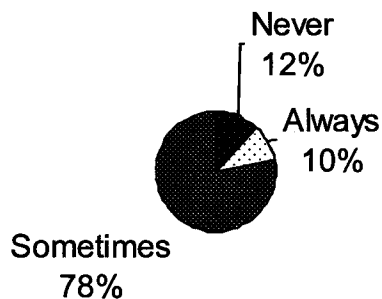
Knowledge of commitment programs: The survey asked juvenile delinquency judges to indicate whether they believe judges possess sufficient knowledge about commitment programs to select programs that will appropriately address youth needs. Out of 41 responses, four judges (10 percent) answered "Always"; 32 judges (78 percent) answered "Sometimes"; and five judges (12 percent) answered "Never." [See Exhibit 4.]

Exhibit 4.

²⁵ The survey dated June 30, 2005, only requested opinions regarding residential commitment because the non-residential minimum-risk restrictiveness level was not operative until July 1, 2005. See Ch. 2005-263, L.O.F. (creating the minimum-risk restrictiveness level).

²⁶ Statute requires a multidisciplinary assessment of a delinquent youth when the youth is being considered for commitment by the DJJ or the court. Statute also permits the court to order such assessment in its discretion even if commitment is not being considered. Section 985.229(2), F.S.

Do judges believe they possess sufficient knowledge to select commitment programs?



The survey also asked judges to identify how they learn about the content and effectiveness of commitment programs. Thirty-six judges responded to this question and the most frequently provided answers were:

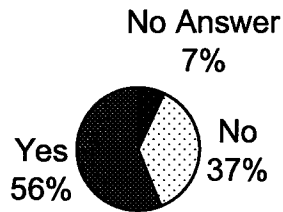
- Information provided by DJJ staff and publications.
- Program site visitation.
- Discussions with the youth and/or his or her guardian during and after the youth's completion of the commitment program.

Additionally, responding judges indicated that they: (1) could receive greater education regarding the content and effectiveness of commitment programs by requiring DJJ staff to provide them with such information in writing and with training at judicial conferences; and (2) would make greater efforts to learn about the content and effectiveness of commitment programs if they had the ability to select particular programs.

Judicial discretion to select commitment programs: The survey asked juvenile delinquency judges to indicate whether they believe the law should be amended to provide them with the option of selecting a particular program for a youth within the court-ordered commitment restrictiveness level. Out of 41 surveys, 23 judges (56 percent) responded, "Yes"; 14 judges (34 percent) responded, "No"; and four judges (10 percent) did not answer. [See Exhibit 5.]

Exhibit 5.

Do judges believe the law should be amended to allow judicial discretion to select commitment programs?



Advantages/ disadvantages to granting judicial discretion to select commitment programs: Judges, who responded that the law should be amended to provide judicial discretion, indicated that the chief advantages would be:

- Greater assurance that placement decisions are based only on the youth's rehabilitation needs and on the program's effectiveness. According to judges, they often know more than the DJJ about the youth, the youth's family, and the community's needs. Further, judges indicated that they would be less influenced than the DJJ by program availability and budgetary concerns when making placement decisions.
- The continued funding of only the most effective programs. As explained by one judge, granting judicial discretion may initially result in the overcrowding of the most effective programs; however, ultimately, this would require the DJJ to expand the most effective programs or open new ones that are equally effective.

Disadvantages to granting judicial discretion, as indicated by responding judges, included that:

- The DJJ is more familiar with the content and availability of commitment programs than the court.
- Judges are not social workers or mental health professionals and often only handle delinquency cases for a brief period of time or on a part-time basis. The lack of experience and knowledge could result in inappropriate judicial placements.
- The time youth spend awaiting commitment placements may increase if the courts over utilize certain programs and create a backlog.
- Parents would always request that the court place the youth in the program closest to home even if the program did not meet the youth's needs.²⁷

²⁷ Under the judicial discretion legislation considered in 2003 and 2005, the court would not have been required to grant the parent's request for a closely located program. Further, parents currently can make this request of the DJJ.

The DJJ's Position on Judicial Discretion

In preparation for this report, the DJJ was asked to provide its current position on whether judges should be provided with discretion to select commitment programs; however, DJJ representatives indicated that they do not wish to take an official position until legislation on the subject is filed and may be reviewed.

Senate Interim Project Report 2004-126 explained the DJJ's position on this subject as follows: "The DJJ maintained that this new practice [i.e., the new practice authorized by the 2003 legislation, which would have granted judicial discretion to select particular commitment programs] would infringe upon its ability and authority to manage the placement of adjudicated juveniles in commitment programs."²⁸

Further, concerning the DJJ's position on this subject, it was stated in the staff analysis for HB 1917 in 2005, that:

The department [the DJJ] also indicates that the bill's amendments to s. 985.231, F.S., which permit courts to specify commitment programs, may result in additional post-disposition detention costs. According to the department, the average length of stay in post-disposition [secure] detention while awaiting placement in a commitment program is 13 days. Under the bill, the court is permitted to specify a commitment program so long as placement occurs within 45 days (thereby, according to the DJJ, permitting an additional 32 days in detention). The department states that this may generate up to an approximate \$533.6K fiscal impact for additional detention costs based on the following calculation: 145 (average daily secure detention population) X \$115 (daily secure detention cost per youth) X 32 (additional days permitted by the bill). This figure, however, is likely overstated for the following reasons: (a) not all courts will specify a program for committed youth; (b) not all court specified commitment programs will require the youth to wait more than the average of 13 days to be placed; and (c) not all committed youth are going to be placed in secure detention while awaiting commitment program placement.^{29 30}

²⁸ *Judicial Discretion Placing Juveniles in Specific Commitment Programs*, Report No. 2004-126 at p. 1.

²⁹ Committed youth may only be placed in secure detention while awaiting placement in commitment if the youth's risk assessment instrument (RAI) score warrants secure detention. *J.W. v. Leitner*, 801 So.2d 295 (Fla. 2nd DCA 2001). If the youth is committed to the: (a) low- or moderate-risk restrictiveness level, s. 985.215(10)(a)1., F.S., limits secure detention prior to commitment program placement to 15-days; or (b) high- or maximum-risk restrictiveness level, s. 985.215(10)(c) and (d), F.S., provides for the continuance of any type of detention for which the youth scored until placement.

³⁰ See House Bill Analysis for HB 1917, April 12, 2005, p. 8.

IV. CONCLUSION AND RECOMMENDATIONS

As discussed *supra*, the Legislature has twice considered, but not passed, legislation that would grant judges the discretion to select particular commitment programs. Specifically, the 2005 legislation would have:

- Permitted judges to specify a commitment program that is within the court-ordered restrictiveness level and under contract with the DJJ.
- Authorized the DJJ to provide judges, who specify high- or maximum-risk programs, with alternative placements that could be accomplished more quickly than the court-specified placement.
- Required judges, if the specified placement could not occur within 45 days after the commitment order, to select from at least three alternative placements provided by the DJJ.
- Required the DJJ to obtain written approval from the court prior to transferring a youth, under s. 985.404(4), F.S., from a court-specified program.

The results of the survey conducted for this interim project indicate that more than half (56 percent) of juvenile delinquency judges responding support judicial discretion to select commitment programs because they believe it will assist in insuring that placements are based on the youth's needs and the most effective programming available, rather than on program availability and budgetary concerns. As discussed *supra*, however, judges and the DJJ have indicated that the legislation could be disadvantageous in that: (a) sufficient information on the content and effectiveness of commitment programs may not be readily available to judges; (b) DJJ employees, who attend the commitment staffing, are in the best position to know which programs are available and for which the youth meets eligibility requirements;³¹ and (c) the time youth spend awaiting commitment placements may increase if judges over utilize the most effective programs.³²

In order to mitigate the disadvantages cited, the Legislature may wish to consider the following options if legislation granting judicial discretion is filed in the future:

- **Enhancing judicial knowledge generally--**
 - The Legislature, in order to increase judicial knowledge of the content and effectiveness of commitment programs generally, may wish to require the DJJ to annually provide juvenile delinquency judges with:
 - A single publication that comprehensively details the content of each commitment program offered in Florida, the population of youth served, treatment services provided, applicable disqualifying factors, recidivism rates, and PAM and QA ratings.³³
 - Training at judicial education programming biannually sponsored by the Office of the State Courts Administrator.

³¹ The JJIS determines youth eligibility for a commitment program by evaluating the youth's needed services and determining whether the youth possesses any disqualifying factors for the program. Services and disqualifying factors are described at page 5 of this report.

³² As discussed *supra*, however, this alleged disadvantage may ultimately result in the DJJ either expanding the most effective programs or opening new ones that are equally effective.

³³ Currently, the DJJ produces a document entitled the, "JJIS Commitment Program Resource Directory," which provides some information on each program's substance, population, treatment services, and disqualifying factors. It does not contain, however, information on recidivism rates or PAM or QA scores. This latter information is reported by the DJJ in multiple other publications.

- **Creating a flexible and accountable judicial placement process that provides judges with information necessary to placement decision making –**
 - The Legislature may wish to require that the DJJ include the following information in a PDR when a judge indicates that he or she may exercise placement discretion during a youth's disposition: (a) the list of programs produced by the JJIS for the youth at the restrictiveness level being considered by the court and at the restrictiveness level recommended by the DJJ; and (b) the wait list for each program on the JJIS list. Such information would advise the judge of the programs for which the youth is eligible and in which the youth can most quickly be placed.
 - The Legislature may wish to require that judges place youth in a JJIS-listed program with the exception that judges may select different programs if they: (a) state reasons on the record, which establish by a preponderance of the evidence why the JJIS-listed programs are being rejected; and (b) find that the youth does not possess factors that would disqualify him or her from the selected program. As with judicial deviations from DJJ restrictiveness level recommendations, the decision to deviate from the program list could be made subject to appeal.³⁴ Such a process would afford judicial flexibility, while requiring judicial accountability.

- **Minimizing wait list increases –**
 - Based on data for Fiscal Years 2003 through 2005, the average wait list time for placement in a low-, moderate-, or high-risk program was 28 days and in a maximum-risk program was 17.7 days. Under the 2005 legislation, if a court-specified placement would have required more than 45 days, the judge would have had to select from at least three alternative programs identified by the DJJ. In order to eliminate the possibility of judicial placements substantially increasing the average wait list times, the Legislature may wish to consider lowering the 45-day trigger to 30 days.

- **Conducting a pilot project–**
 - The Legislature may wish to initially implement judicial discretion to select commitment programs in a limited number of judicial circuits for a limited period of time so that this policy change may be fully evaluated prior to statewide adoption. Data required to be captured during the pilot project could include: (a) the number of youth committed by circuit; (b) the number of youth placed in judicially-specified programs by circuit; (c) the number of times judges deviated from JJIS-listed programs and the number of appeals taken from those deviations; (d) the average wait list time for judicially- and DJJ-specified program placements; (e) the average time spent by youth in secure detention while awaiting judicially- and DJJ-specified program placements; and (f) a description of any written documents and training provided by the DJJ to judges regarding the content and effectiveness of commitment programs.

³⁴ See Section 985.23(3)(c), F.S.